CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Policy and Operations

(Amended After Comments)

907 KAR 15:010. Coverage provisions and requirements regarding behavioral health services provided by independent providers.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed behavioral health professionals who are independently enrolled in the Medicaid Program or practitioners working for or under the supervision of the independent providers.

Section 1. General Coverage Requirements. (1) For the department to reimburse for a service covered under this administrative regulation, the service shall be:

(a) Medically necessary;

(b) Provided:

1. To a recipient; and

2. By a:

a. Provider who meets the provider participation requirements established in Section 2 of this administrative regulation; or

b. Practitioner working under the supervision of a provider who meets the provider participation requirements established in Section 2 of this administrative regulation; and

(c) Billed to the department by the billing provider who provided the service or under whose supervision the service was provided by an authorized practitioner in accordance with Section 3 of this administrative regulation.

(2)(a) Direct contact between a provider or practitioner and a recipient shall be required for each service except for a collateral service for a child under the age of twenty-one (21) years if the collateral service is in the child's plan of care.

(b) A service that does not meet the requirement in paragraph (a) of this subsection shall not be covered.

(3) A billable unit of service shall be actual time spent delivering a service in a face-to-face encounter.

(4) A service shall be:

(a) Stated in a recipient's treatment plan; **[~~and~~]**

(b) Provided in accordance with a recipient's treatment plan; **and**

(c) Provided on a regularly scheduled basis except for a screening**, [~~or~~]** assessment**, or crisis intervention[~~; and~~**

~~(d) Made available on a nonscheduled basis if necessary during a crisis or time of increased stress for the recipient~~].

Section 2. Provider Participation. (1) To be eligible to provide services under this administrative regulation a provider shall:

(a) Be currently enrolled in the Kentucky Medicaid Program in accordance with 907 KAR 1:672; and

(b) Except as established in subsection (2) of this section, be currently participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671.

(2) In accordance with 907 KAR 17:010, Section 3(3), a provider of a service to an enrollee shall not be required to be currently participating in the **fee-for-service** Medicaid Program**[~~if the managed care organization in which the enrollee is enrolled does not require the provider to be currently participating in the Medicaid Program~~]**.

(3) A provider shall:

(a) Agree to provide services in compliance with federal and state laws regardless of age, sex, race, creed, religion, national origin, handicap, or disability; and

(b) Comply with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments to the Act.

Section 3. Covered Services. (1) Except as specified in the requirements stated for a given service, the services covered may be provided for a:

(a) Mental health disorder;

(b) Substance use disorder; or

(c) Co-occurring mental health and substance use disorder.

(2) The following shall be covered under this administrative regulation in according with the corresponding following requirements:

(a) A screening provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

(b) An assessment provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

(c) Psychological testing provided by:

1. A licensed psychologist;

2. A licensed psychological practitioner; or

3. A licensed psychological associate working under the supervision of a licensed

psychologist if the licensed psychologist is the billing provider for the service;

(d) Crisis intervention provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

[~~14. A peer support specialist working under the supervision of a mental health~~

~~**professional;**~~

~~**15. A family peer support specialist working under the supervision of a mental health professional; or**~~

~~**16. A youth peer support specialist working under the supervision of a mental health professional;**~~**]**

(e) Service planning provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the

billing provider for the service; or

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

(f) Individual outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or

13. A physician assistant working under the supervision of a physician if the physi-

cian is the billing provider for the service;

(g) Family outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

(h) Group outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

(i) Collateral outpatient therapy provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

(j) A screening, brief intervention, and referral to treatment for a substance use disorder provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

(k) Medication assisted treatment for a substance use disorder provided by:

1. A physician; **[~~or~~]**

2. A psychiatrist; **or**

3. An advanced practice registered nurse;

(l) Day treatment provided by**[~~ a team of at least two (2) of the following~~]**:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; **or**

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

[~~14. Peer support specialist working under the supervision of a mental health professional;~~

~~15. A family peer support specialist working under the supervision of a mental health professional; or~~

~~**16. A youth peer support specialist working under the supervision of a mental health professional;**~~**]**

(m) Comprehensive community support services provided by**[** ~~**a team of at least two (2) of the following**~~**]**:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; **or**

13. A physician assistant working under the supervision of a physician if the physi-

cian is the billing provider for the service;

[~~14. A peer support specialist working under the supervision of a mental health professional;~~

~~15. A family peer support specialist working under the supervision of a mental health professional;~~

~~16. A youth peer support specialist working under the supervision of a mental health professional; or~~

~~17. A community support associate~~];

(n) Peer support provided by:

1. A peer support specialist working under the supervision of a **qualified** mental health professional;

2. **[~~A family peer support specialist working under the supervision of a mental health professional; or~~**

~~3~~.] A youth peer support specialist working under the supervision of a **qualified** mental health professional; **[~~or~~]**

(o) Parent or family peer support provided by**[~~:~~**

~~1. A peer support specialist working under the supervision of a mental health professional;~~

~~2.~~] a family peer support specialist working under the supervision of a **qualified** mental health professional;

(p) Intensive outpatient program provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service;

(g) Therapeutic rehabilitation program provided by:

1. A licensed psychologist;

2. A licensed professional clinical counselor;

3. A licensed clinical social worker;

4. A licensed marriage and family therapist;

5. A physician;

6. A psychiatrist;

7. An advanced practice registered nurse;

8. A licensed psychological practitioner;

9. A licensed psychological associate working under the supervision of a licensed psychologist if the licensed psychologist is the billing provider for the service;

10. A licensed professional counselor associate working under the supervision of a licensed professional clinical counselor if the licensed professional clinical counselor is the billing provider for the service;

11. A certified social worker working under the supervision of a licensed clinical social worker if the licensed clinical social worker is the billing provider for the service;

12. A marriage and family therapy associate working under the supervision of a licensed marriage and family therapist if the licensed marriage and family therapist is the billing provider for the service; or

13. A physician assistant working under the supervision of a physician if the physician is the billing provider for the service[~~or~~

~~3. A youth peer support specialist working under the supervision of a mental health professional~~].

(3)(a) A screening shall:

1. Be the determination of the likelihood that an individual has a mental health disorder, substance use disorder, or co-occurring disorder;

2. Not establish the presence or specific type of disorder; and

3. Establish the need for an in-depth assessment.

(b) An assessment shall:

1. Include gathering information and engaging in a process with the individual that enables the provider to:

a. Establish the presence or absence of a mental health disorder or substance use disorder;

b. Determine the individual's readiness for change;

c. Identify the individual's strengths or problem areas that may affect the treatment and recovery processes; and

d. Engage the individual in developing an appropriate treatment relationship;

2. Establish or rule out the existence of a **clinical[~~clinic~~]** disorder or service need;

3. **Include[~~Including~~]** working with the individual to develop a treatment and service plan; and

4. Not include psychological or psychiatric evaluations or assessments.

(c) Psychological testing shall include:

1. A psychodiagnostic assessment of personality, psychopathology, emotionality, or intellectual disabilities; and

2. Interpretation and a written report of testing results.

(d) Crisis intervention:

1. Shall be a therapeutic intervention for the purpose of immediately reducing or elim-

inating the risk of physical or emotional harm to:

a. The recipient; or

b. Another individual;

2. Shall consist of clinical intervention and support services necessary to provide integrated crisis response, crisis stabilization interventions, or crisis prevention activities for individuals**[** ~~**with behavioral health disorders**~~**]**;

3. Shall be provided:

a. **On-site at the provider's[**~~**In an**~~**] office[**~~**, home, or community setting where the individual is experiencing the crisis**~~**]**;

b. As an immediate relief to the presenting problem or threat; and

c. In a face-to-face, one-on-one encounter between the provider and the recipient;

4. May include verbal de-escalation, risk assessment, or cognitive therapy; and

5. Shall be followed by a referral to noncrisis services if applicable.

(e)1. Service planning shall **involve:**

a. Assisting a recipient in creating an individualized plan for services needed for maximum reduction of an intellectual disability; and

b. Restoring a recipient's functional level to the recipient's best possible functional level[~~**consist of assisting a recipient in creating an individualized plan for services needed to maintain functional stability or return to stability as soon as possible in order to avoid out-of-home care**~~**]**.

2. A service plan:

a. Shall be directed by the recipient; and

b. May include:

(i) A mental health advance directive being filed with a local hospital;

(ii) A crisis plan; or

(iii) A relapse prevention strategy or plan.

(f) Individual outpatient therapy shall:

1. Be provided to promote the:

a. Health and wellbeing of the individual; or

b. Recovery from a substance related disorder;

2. Consist of:

a. A face-to-face, one-on-one encounter between the provider and recipient; and

b. A behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

3. Be aimed at:

a. Reducing adverse symptoms;

b. Reducing or eliminating the presenting problem of the recipient; and

c. Improving functioning; and

4. Not exceed three (3) hours per day **unless additional time is medically necessary**.

(g)1. Family outpatient therapy shall consist of a face-to-face behavioral health therapeutic intervention provided:

a. Through scheduled therapeutic visits between the therapist and the recipient and at least one (1) member of the recipient's family; and

b. To address issues interfering with the relational functioning of the family and to improve interpersonal relationships within the recipient's home environment.

2. A family outpatient therapy session shall be billed as one (1) service regardless of the number of individuals (including multiple members from one (1) family) who participate in the session.

3. Family outpatient therapy shall:

(a) Be provided to promote the:

1. Health and wellbeing of the individual; or

2. Recovery from a substance related disorder; and

(b) Not exceed three (3) hours per day per individual unless additional time is medically necessary.

(h)1. Group outpatient therapy shall:

a. Be provided to promote the:

(i) Health and wellbeing of the individual; or

(ii) Recovery from a substance related disorder;

b. Consist of a face-to-face behavioral health therapeutic intervention provided in accordance with the recipient's identified treatment plan;

c. Be provided to a recipient in a group setting:

(i) Of nonrelated individuals; and

(ii) Not to exceed eight (8) individuals in size;

d. Center on goals including building and maintaining healthy relationships, personal goals setting, and the exercise of personal judgment;

e. Not include physical exercise, a recreational activity, an educational activity, or a social activity; and

f. Not exceed three (3) hours per day **per recipient unless additional time is medi-**

cally necessary.

2. The group shall have a:

a. Deliberate focus; and

b. Defined course of treatment.

3. The subject of **[~~a group receiving~~]** group outpatient therapy shall be related to each recipient participating in the group.

4. The provider shall keep individual notes regarding each recipient within the group and within each recipient's health record.

(i)1. Collateral outpatient therapy shall:

a. Consist of a face-to-face behavioral health consultation:

(i) With a parent or caregiver of a recipient, household member of a recipient, legal representative of a recipient, school personnel, treating professional, or other person with custodial control or supervision of the recipient; and

(ii) That is provided in accordance with the recipient's treatment plan; **[~~and~~]**

b. Not be reimbursable if the therapy is for a recipient who is at least twenty-one (21) years of age**; and**

c. Not exceed three (3) hours per day per individual unless additional time is medically necessary.

2. Consent to discuss a recipient's treatment with any person other than a parent or legal guardian shall be signed and filed in the recipient's health record.

(j) Screening, brief intervention, and referral to treatment for a substance use disorder shall:

1. Be an evidence-based early intervention approach for an individual with non-

dependent substance use to provide an effective strategy for intervention prior to the need for more extensive or specialized treatment; and

2. Consist of:

a. Using a standardized screening tool to **assess[~~assessing~~]** an individual for risky substance use behavior;

b. Engaging a recipient, who demonstrates risky substance use behavior, in a short conversation and providing feedback and advice; and

c. Referring a recipient to:

(i) Therapy; or

(ii) Other additional services to address substance use if the recipient is determined to need other additional services.

(k) Medication assisted treatment for a substance use disorder:

1. Shall include:

a. Any opioid addiction treatment that includes a United States Food and Drug Administration-approved medication for the detoxification or maintenance treatment of opioid addiction along with counseling or other supports;

b. Comprehensive maintenance;

c. Medical maintenance;

d. Interim maintenance;

e. Detoxification; or

f. Medically supervised withdrawal;

2. May be provided in:

a. An opioid treatment program;

b. A medication unit affiliated with an opioid treatment program;

c. A physician's office **except for methadone**; or

d. Other community setting; and

3. Shall increase the likelihood for cessation of illicit opioid use or prescription opioid abuse.

(l)1. Day treatment shall be a nonresidential, intensive treatment program designed for a child under the age of twenty-one (21) years who has:

a. An emotional disability or neurobiological or substance use disorder; and

b. A high risk of out-of-home placement due to a behavioral health issue.

2. Day treatment services shall:

a. Consist of an organized, behavioral health program of treatment and rehabilitative services (substance use disorder, mental health, or co-occurring mental health and substance use disorder);

b. Have unified policies and procedures that:

(i) Address the program philosophy, admission and discharge criteria, admission and discharge process, staff training, and integrated case planning; and

(ii) Have been approved by the recipient's local education authority and the day treatment provider;

c. Include:

(i) Individual outpatient therapy, family outpatient therapy, or group outpatient therapy;

(ii) Behavior management and social skill training;

(iii) Independent living skills that correlate to the age and development stage of the

recipient; or

(iv) Services designed to explore and link with community resources before discharge and to assist the recipient and family with transition to community services after discharge; and

d. Be provided:

(i) In collaboration with the education services of the local education authority including those provided through 20 U.S.C. 1400 et seq. (Individuals with Disabilities Education Act) or 29 U.S.C. 701 et seq. (Section 504 of the Rehabilitation Act);

(ii) On school days and during scheduled breaks;

(iii) In coordination with the recipient's individual educational plan if the recipient has an individual educational plan;

(iv) Under the supervision of a **qualified mental health professional[~~licensed or certified behavioral health practitioner or a behavioral health practitioner working under clinical supervision~~]**; and

(v) With a linkage agreement with the local education authority that specifies the responsibilities of the local education authority and the day treatment provider.

3. **[~~To provide day treatment services, a provider shall have:~~**

~~a. The capacity to employ staff authorized to provide day treatment services in accordance with subsection (2)(l) of this section and to coordinate the provision of services among team members;~~

~~b. The capacity to provide the full range of residential crisis stabilization services as stated in subparagraph 1 of this paragraph;~~

~~c. Demonstrated experience in serving individuals with behavioral health dis-~~

~~orders;~~

~~d. The administrative capacity to ensure quality of services;~~

~~e. A financial management system that provides documentation of services and costs;~~

~~f. The capacity to document and maintain individual case records; and~~

~~g. Knowledge of substance use disorders.~~

~~4.~~**]** Day treatment shall not include a therapeutic clinical service that is included in a child's individualized education plan.

(m)1. Comprehensive community support services shall:

a. Be activities necessary to allow an individual to live with maximum independence in **the** community**[-~~integrated housing~~]**;

b. Be intended to ensure successful community living through the utilization of skills training, cueing, or supervision as identified in the recipient's treatment plan; **and**

c. Include:

(i) Reminding a recipient to take medications and monitoring symptoms and side effects of medications; **[~~or~~]**

(ii) Teaching parenting skills**;**

(iii)[~~,~~] Teaching community resource access and utilization**;**

(iv)[~~,~~] Teaching emotional regulation skills**;**

(v)[~~,~~] Teaching crisis coping skills**;**

(vi)[~~,~~] Teaching how to shop**;**

(vii)[~~,~~], Teaching about transportation**;**

(viii)[~~,~~] Teaching financial management**;**

(ix)[~~,~~ ~~or~~] Developing and enhancing interpersonal skills; **or**

(x) Improving daily living skills[~~and~~

~~c. Meet the requirements for comprehensive community support services established in 908 KAR 2:250~~].

2.[~~3.~~] To provide comprehensive community support services, a provider shall**:**

a. Have**[~~:~~**

~~a.~~] the capacity to employ staff authorized **pursuant to 908 KAR 2:250** to provide comprehensive community support services in accordance with subsection (2)(m) of this section and to coordinate the provision of services among team members; **and**

b. **Meet the requirements for comprehensive community support services established in 908 KAR 2:250[~~The capacity to provide the full range of comprehensive community support services as stated in this subparagraph 1 of this paragraph;~~**

~~c. Demonstrated experience in serving individuals with behavioral health disorders;~~

~~d. The administrative capacity to ensure quality of services;~~

~~e. A financial management system that provides documentation of services and costs; and~~

~~f. The capacity to document and maintain individual case records~~].

(n)1. Peer support services shall:

a. Be social and emotional support that is provided by an individual who is **employed by a provider group and who has experienced[~~experiencing~~]** a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder

to a recipient by sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided by a self-identified consumer **[~~or parent or family member of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services~~]** who has been trained and certified in accordance with 908 KAR 2:220 **or 908 KAR 2:240**;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient; and

f. Be identified in each recipient's treatment plan.

2. To provide peer support services a provider shall:

a. Have demonstrated the capacity to provide the core elements of peer support services for the behavioral health population being served including the age range of the population being served;

b. Employ peer support specialists who are qualified to provide peer support services in accordance with 908 KAR 2:220 **or 908 KAR 2:240**; **and**

c. Use a qualified mental health professional to supervise peer support specialists**[~~;~~**

~~d. Have the capacity to employ staff authorized to provide comprehensive community support services in accordance with subsection (2)(n) of this section~~

~~and to coordinate the provision of services among team members;~~

~~e. Have the capacity to provide the full range of comprehensive community support services as stated in this subparagraph 1 of this paragraph;~~

~~f. Have demonstrated experience in serving individuals with behavioral health disorders;~~

~~g. Have the administrative capacity to ensure quality of services;~~

~~h. Have a financial management system that provides documentation of services and costs; and~~

~~i. Have the capacity to document and maintain individual case records~~**]**.

(o)1. Parent or family peer support services shall:

a. Be emotional support that is provided by a parent or family member**, who is employed by a provider group,** of a child who **has experienced[**~~is experiencing~~**]** a mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder to a parent or family member with a child sharing a similar mental health disorder, substance use disorder, or co-occurring mental health and substance use disorder in order to bring about a desired social or personal change;

b. Be an evidence-based practice;

c. Be structured and scheduled nonclinical therapeutic activities with an individual recipient or a group of recipients;

d. Be provided by a self-identified parent or family member of a child consumer of mental health disorder services, substance use disorder services, or co-occurring mental health disorder services and substance use disorder services who has been trained and certified in accordance with 908 KAR 2:230;

e. Promote socialization, recovery, self-advocacy, preservation, and enhancement of community living skills for the recipient; and

f. Be identified in each recipient's treatment plan.

2. To provide parent or family peer support services a provider shall:

a. Have demonstrated the capacity to provide the core elements of parent or family peer support services for the behavioral health population being served including the age range of the population being served;

b. Employ family peer support specialists who are qualified to provide family peer support services in accordance with 908 KAR 2:230; **and**

c. Use a qualified mental health professional to supervise family peer support specialists**[**~~**;**~~

~~**d. Have the capacity to employ staff authorized to provide comprehensive community support services in accordance with subsection (2)(n) of this section and to coordinate the provision of services among team members;**~~

~~**e. Have the capacity to provide the full range of comprehensive community support services as stated in this subparagraph 1 of this paragraph;**~~

~~**f. Have demonstrated experience in serving individuals with behavioral health disorders;**~~

~~**g. Have the administrative capacity to ensure quality of services;**~~

~~**h. Have a financial management system that provides documentation of services and costs; and**~~

~~**i. Have the capacity to document and maintain individual case records**~~**]**.

(p)1. Intensive outpatient program services shall:

a. Be an alternative to inpatient hospitalization or partial hospitalization for a mental health or substance use disorder;

b. Offer a multi-modal, multi-disciplinary structured outpatient treatment program that is significantly more intensive than individual outpatient therapy, group outpatient therapy, or family outpatient therapy;

c. Be provided at least three (3) hours per day at least three (3) days per week; and

d. Include:

(i) Individual outpatient therapy;

(ii) Group outpatient therapy;

(iii) Family outpatient therapy unless contraindicated;

(iv) Crisis intervention; or

(v) Psycho-education.

2. During psycho-education the recipient or recipient's family member shall be:

a. Provided with knowledge regarding the recipient's diagnosis, the causes of the condition, and the reasons why a particular treatment might be effective for reducing symptoms; and

b. Taught how to cope with the recipient's diagnosis or condition in a successful manner.

3. An intensive outpatient program services treatment plan shall:

a. Be individualized; and

b. Focus on stabilization and transition to a lesser level of care.

4. To provide intensive outpatient program services, a provider shall:

a. Be employed by a provider group; and

b. Have:

(i) Access to a board-certified or board-eligible psychiatrist for consultation;

(ii) Access to a psychiatrist, other physician, or advanced practice registered nurse for medication management;

(iii) Adequate staffing to ensure a minimum recipient-to-staff ratio of fifteen (15) recipients to one (1) staff person;

(iv) The capacity to provide services utilizing a recognized intervention protocol based on recovery principles;

(v) The capacity to employ staff authorized to provide intensive outpatient program services in accordance with this section and to coordinate the provision of services among team members;

(vi) The capacity to provide the full range of intensive outpatient program services as stated in this paragraph;

(vii) Demonstrated experience in serving individuals with behavioral health disorders;

(viii) The administrative capacity to ensure quality of services;

(ix) A financial management system that provides documentation of services and costs; and

(x) The capacity to document and maintain individual case records.

5. Intensive outpatient program services shall be provided in a setting with a minimum recipient-to-staff ratio of fifteen (15) to one (1).

(q)1. A therapeutic rehabilitation program shall be:

a. A rehabilitative service for an:

(i) Adult with a serious mental illness; or

(ii) Individual under the age of twenty-one (21) years who has a serious emotional disability; and

b. Designed to maximize the reduction of an intellectual disability and the restoration of the individual's functional level to the individual's best possible functional level.

2. A recipient in a therapeutic rehabilitation program shall establish the recipient's own rehabilitation goals within the person-centered service plan.

3. A therapeutic rehabilitation program shall:

a. Be delivered using a variety of psychiatric rehabilitation techniques;

b. Focus on:

(i) Improving daily living skills;

(ii) Self-monitoring of symptoms and side effects;

(iii) Emotional regulation skills;

(iv) Crisis coping skill; and

(v) Interpersonal skills; and

c. Be delivered individually or in a group.

(4)(a) The following requirements shall apply to any provider of a service to a recipient for a substance use disorder or co-occurring mental health disorder and substance use disorder:

1. The licensing requirements established in 908 KAR 1:370;

2. The physical plant requirements established in 908 KAR 1:370;

3. The organization and administration requirements established in 908 KAR 1:370;

4. The personnel policy requirements established in 908 KAR 1:370;

5. The quality assurance requirements established in 908 KAR 1:370;

6. The clinical staff requirements established in 908 KAR 1:370;

7. The program operational requirements established in 908 KAR 1:370; and

8. The outpatient program requirements established in 908 KAR 1:370.

(b) The detoxification program requirements established in 908 KAR 1:370 shall apply to a provider of a detoxification service.

(5) The extent and type of **a screening[~~assessment performed at the time of a screening~~]** shall depend upon the problem of the individual seeking or being referred for services.

(6) A diagnosis or clinic impression shall be made using terminology established in the most current edition of the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders.

(7) The department shall not reimburse for a service billed by or on behalf of an entity or individual who is not a billing provider.

Section 4. Noncovered Services or Activities. (1) The following services or activities shall not be covered under this administrative regulation:

(a) A service provided to:

1. A resident of:

a. A nursing facility; or

b. An intermediate care facility for individuals with an intellectual disability;

2. An inmate of a federal, local, or state:

a. Jail;

b. Detention center; or

c. Prison;

3. An individual with an intellectual disability without documentation of an additional psychiatric diagnosis;

(b) Psychiatric or psychological testing for another agency, including a court or school, that does not result in the individual receiving psychiatric intervention or behavioral health therapy from the independent provider;

(c) A consultation or educational service provided to a recipient or to others;

(d) Collateral therapy for an individual aged twenty-one (21) years or older;

(e) A telephone call, an email, a text message, or other electronic contact that does not meet the requirements stated in the definition of "face-to-face";

(f) Travel time;

(g) A field trip;

(h) A recreational activity;

(i) A social activity; or

(j) A physical exercise activity group.

(2)(a) A consultation by one (1) provider or professional with another shall not be covered under this administrative regulation except as specified in Section 3(3)(k) of this administrative regulation.

(b) A third party contract shall not be covered under this administrative regulation.

Section 5. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider, of any program in which

the service is covered, during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a local health department.

Section 6. Records Maintenance, Documentation, Protection, and Security. (1) A provider shall maintain a current health record for each recipient.

(2(a) A health record shall document each service provided to the recipient including the date of the service and the signature of the individual who provided the service.

(b) The individual who provided the service shall date and sign the health record on the date that the individual provided the service.

(3) A health record shall:

(a) Include:

1. An identification and intake record including:

a. Name;

b. Social Security number;

c. Date of intake;

d. Home (legal) address;

e. Health insurance information;

f. Referral source and address of referral source;

g. Primary care physician and address;

h. The reason the individual is seeking help including the presenting problem and diagnosis; and

i. Any physical health diagnosis, if a physical health diagnosis exists for the individual, and information regarding:

(i) Where the individual is receiving treatment for the physical health diagnosis; and

(ii) The physical health provider;

k. The name of the informant and any other information deemed necessary by the independent provider to comply with the requirements of:

(i) This administrative regulation;

(ii) The provider's licensure board;

(iii) State law; or

(iv) Federal law;

2. Documentation of the:

a. Screening;

b. Assessment;

c. Disposition; and

d. Six (6) month review of a recipient's treatment plan each time a six (6) month review occurs; and

3. A complete history including mental status and previous treatment;

4. An identification sheet;

5. A consent for treatment sheet that is accurately signed and dated; and

6. The individual's stated purpose for seeking services**; and**[~~.~~]

(b) Be:

1. Maintained in an organized central file;

2. Furnished to the**:**

a. Cabinet for Health and Family Services upon request; **or**

b. Managed care organization in which the recipient is enrolled upon request if the recipient is enrolled with a managed care organization;

3. Made available for inspection and copying by**:**

a. Cabinet for Health and Family Services' personnel; **or**

b. Personnel of the managed care organization in which the recipient is enrolled if the recipient is enrolled with a managed care organization;

4. Readily accessible; **and**

5. Adequate for the purpose establishing the current treatment modality and progress of the recipient**.[;]**

(4) Documentation of a screening shall include:

(a) Information relative to the individual's stated request for services; and

(b) Other stated personal or health concerns if other concerns are stated.

(5)(a) A provider's notes regarding a recipient shall:

1. Be made within forty-eight (48) hours of each service visit;

2. Describe the:

a. Recipient's symptoms or behavior, reaction to treatment, and attitude;

b. Therapist's intervention;

c. Changes in the treatment plan if changes are made; and

d. Need for continued treatment if continued treatment is needed.

(b)1. Any edit to notes shall:

a. Clearly display the changes;

b. Be initialed and dated.

2. Notes shall not be erased or illegibly marked out.

(c)1. Notes recorded by a practitioner working under supervision shall be co-signed and dated by the supervising professional**[** ~~**providing the service**~~**]**.

2. If services are provided by a practitioner working under supervision, there shall be a monthly supervisory note recorded by the supervision professional reflecting consultations with the practitioner working under supervision concerning the:

a. Case; and

b. Supervising professional's evaluation of the services being provided to the recipient.

(6) Immediately following a screening of a recipient, the provider shall perform a disposition related to:

(a) **A provisional[**~~**An appropriate**~~**]** diagnosis;

(b) A referral for further consultation and disposition, if applicable; **or[**~~**and**~~**]**

(c)1. **If applicable,** termination of services and referral to an outside source for further services; or

2. **If applicable,** termination of services without a referral to further services.

(7)(a) A recipient's treatment plan shall be reviewed at least once every six (6) months.

(b) Any change to a recipient's treatment plan shall be documented, signed, and dated by the rendering provider.

(8)(a) Notes regarding services to a recipient shall:

1. Be organized in chronological order;

2. **Be** dated;

3. **Be** titled to indicate the service rendered;

4. State a starting and ending time for the service; and

5. Be recorded and signed by the rendering provider and **include[~~included~~]** the professional title (for example, licensed clinical social worker) of the provider.

(b) Initials, typed signatures, or stamped signatures shall not be accepted.

(c) Telephone contacts, family collateral contacts not coverable under this administrative regulation, or other non-reimbursable contacts shall:

1. Be recorded in the notes; and

2. Not be reimbursable.

(9) A termination summary shall:

(a) Be required, upon termination of services, for each recipient who received at least three (3) service visits; and

(b) Contain a summary of the significant findings and events during the course of treatment including the:

1. Final assessment regarding the progress of the individual toward reaching goals and objectives established in the individual's treatment plan;

2. Final diagnosis of clinical impression; **and**

3. Individual's condition upon termination and disposition.

(c) A health record relating to an individual who terminated from receiving services shall be fully completed within ten (10) days following termination.

(10) If an individual's case is reopened within ninety (90) days of terminating services for the same or related issue, a reference to the prior case history with a note regarding the interval period shall be acceptable.

(11) If a recipient is transferred or referred to a health care facility or other provider for care or treatment, the transferring provider shall, if the recipient gives the provider written consent to do so, forward a copy or summary of the recipient's health record to the health care facility or other provider who is receiving the recipient **within ten (10) business days of the transfer or referral**.

(12)(a) If a provider's Medicaid Program participation status changes as a result of voluntarily terminating from the Medicaid Program, involuntarily terminating from the Medicaid Program, a licensure suspension, or death of the provider, the health records of the provider shall:

1. Remain the property of the provider; and

2. Be subject to the retention requirements established in subsection (13) of this section.

(b) A provider shall have a written plan addressing how to maintain health records in the event of the provider's death.

(13)(a) Except as established in paragraph (b) of this subsection, a provider shall maintain a health record regarding a recipient for at least five (5) years from the date of the service or until any audit dispute or issue is resolved beyond five (5) years.

(b) If the Secretary of the United States Department of Health and Human Services requires a longer document retention period than the period referenced in paragraph (a) of this section, pursuant to 42 C.F.R. 431.17, the period established by the secretary shall be the required period.

(14)(a) A provider shall comply with 45 C.F.R. Chapter 164.

(b) All information contained in a health record shall**[** ~~**be**~~**]**:

1. **Be** treated as confidential;

2. Not be disclosed to an unauthorized individual; **and**

3. Be disclosed to an authorized representative of:

a. The department; or

b. Federal government;

(c)1. Upon request, a provider shall provide to an authorized representative of the department or federal government information requested to substantiate:

a. Staff notes detailing a service that was rendered;

b. The professional who rendered a service;

c. The type of service rendered and any other requested information necessary to determine, on an individual basis, whether the service is reimbursable by the department.

2. Failure to provide information referenced in subparagraph 1 of this paragraph shall result in denial of payment for any service associated with the requested information.

Section 7. Medicaid Program Participation Compliance. (1) A provider shall comply with:

(a) 907 KAR 1:671;

(b) 907 KAR 1:672; and

(c) All applicable state and federal laws.

(2)(a) If a provider receives any duplicate payment or overpayment from the department, regardless of reason, the provider shall return the payment to the department.

(b) Failure to return a payment to the department in accordance with paragraph (a) of this section may be:

1. Interpreted to be fraud or abuse; and

2. Prosecuted in accordance with applicable federal or state law.

(3)(a) When the department makes payment for a covered service and the provider accepts the payment:

1. The payment shall be considered payment in full;

2. No bill for the same service shall be given to the recipient; and

3. No payment from the recipient for the same service shall be accepted by the provider.

(b)1. A provider may bill a recipient for a service that is not covered by the Kentucky Medicaid Program if the:

a. Recipient requests the service; and

b. Provider makes the recipient aware in advance of providing the service that the:

(i) Recipient is liable for the payment; and

(ii) Department is not covering the service.

2. If a recipient makes payment for a service in accordance with subparagraph 1 of this paragraph, the:

a. Provider shall not bill the department for the service; and

b. Department shall not:

(i) Be liable for any part of the payment associated with the service; and

(ii) Make any payment to the provider regarding the service.

(4)(a) A provider attests by the provider's signature that any claim associated with a service is valid and submitted in good faith.

(b) Any claim and substantiating record associated with a service shall be subject to audit by the:

1. Department or its designee;

2. Cabinet for Health and Family Services, Office of Inspector General or its designee;

3. Kentucky Office of Attorney General or its designee;

4. Kentucky Office of the Auditor for Public Accounts or its designee;

5. United States General Accounting Office or its designee;

(c) If a provider receives a request from the department to provide a claim or related information or related documentation or record for **auditing[~~Medicaid RAC Program~~]** purposes, the provider shall provide the **requested[~~request~~]** information to the department within the timeframe requested by the department.

(d)1. All services provided shall be subject to review for recipient or provider abuse.

2. Willful abuse by a provider shall result in the suspension or termination of the provider from Medicaid Program participation.

Section 8. Third Party Liability. A provider shall comply with KRS 205.622.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

(2) A provider that chooses to use electronic signatures shall:

(a) Develop and implement a written security policy that shall:

1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

2. Identify each electronic signature for which an individual has access; and

3. Ensure that each electronic signature is created, transmitted, and stored in a se-

cure fashion;

(b) Develop a consent form that shall:

1. Be completed and executed by each individual using an electronic signature;

2. Attest to the signature's authenticity; and

3. Include a statement indicating that the individual has been notified of his responsibility in allowing the use of the electronic signature; and

(c) Provide the department with:

1. A copy of the provider's electronic signature policy;

2. The signed consent form; and

3. The original filed signature immediately upon request.

Section 10. Auditing Authority. The department shall have the authority to audit any:

(1) Claim;

(2) Medical record; or

(3) Documentation associated with any claim or medical record.

Section 11. Federal Approval and Federal Financial Participation. The department's coverage of services pursuant to this administrative regulation shall be contingent upon:

(1) Receipt of federal financial participation for the coverage; and

(2) Centers for Medicare and Medicaid Services' approval for the coverage.

Section 12. Appeals. (1) An appeal of an adverse action by the department regarding a service and a recipient who is not enrolled with a managed care organization shall be in accordance with 907 KAR 1:563.

(2) An appeal of an adverse action by a managed care organization regarding a service and an enrollee shall be in accordance with 907 KAR 17:010.

907 KAR 15:010

REVIEWED:

Date	Lawrence Kissner, Commissioner Department for Medicaid Services

APPROVED:

Date	Audrey Tayse Haynes, Secretary Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 907 KAR 15:010
Contact person: Stuart Owen

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the coverage provisions and requirements regarding Medicaid Program behavioral health services provided by certain licensed behavioral health professionals who are independently enrolled in the Medicaid Program as Medicaid providers or practitioners working for or under the supervision of the independent provides. This administrative regulation is being promulgated in conjunction with two (2) administrative regulations – 907 KAR 15:015 (Reimbursement for behavioral health services provided by independent providers) and 907 KAR 15:005 (Definitions for 907 KAR Chapter 15). Currently, the Department for Medicaid Services does not enroll licensed psychologists, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, or licensed psychological practitioners as independent Medicaid providers. Rather these providers have to work for or under contract with - for example - a community mental health center, a physician’s office, a federally-qualified health center, or a rural health clinic among other entities and the entity bills (and is reimbursed by) the Medicaid Program for the services provided. This administrative regulation also establishes practitioners who may provide behavioral health services under supervision of one (1) of the aforementioned independent providers and in which case the Medicaid Program will reimburse the independent provider (billing provider) for the services.

(b) The necessity of this administrative regulation: This administrative regulation is being promulgated in conjunction with two (2) administrative regulations – 907 KAR 15:015 (Reimbursement for behavioral health services provided by independent providers) and 907 KAR 15:005 (Definitions for KAR Chapter 15) - to comply with a federal mandate and to enhance recipient access to services. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. Currently, DMS covers substance use treatment for pregnant women and children. Additionally, this administrative regulation is necessary to enhance Medicaid recipient access to behavioral health services by expanding the providers and practitioners authorized to provide the services as independent providers or as practitioners working under the supervision of an independent provider. The Department for Medicaid Services (DMS) is anticipating a substantial increase in demand for services as a result of new individuals gaining Medicaid eligibility in 2014. Some new individuals will be those eligible as part of the "expansion group" (a new eligibility group authorized by the Affordable Care Act which is comprised of adults under age sixty-five (65), who are not pregnant, whose income is below 133 percent of the federal poverty level, and who are not otherwise eligible for Medicaid.) Another newly eligible group is a group mandated by the Affordable Care Act comprised of former foster care children between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid benefits. Furthermore, DMS anticipates a significant enrollment in-

crease of individuals eligible under the "old" Medicaid rules who did not seek Medicaid benefits in the past, but will do so as a result of publicity related to the Affordable Care Act, Medicaid expansion, and the Health Benefit Exchange.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with a federal mandate and by enhancing and ensuring Medicaid recipients' access to behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with a federal mandate and by enhancing and ensuring Medicaid recipients' access to behavioral health services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendment after comments clarifies that crisis intervention does not have to be provided regularly; removes peer support specialists, family peer support specialists, and youth peer support specialists from the list of practitioners authorized to provide crisis intervention, day treatment, and comprehensive community support services; removes community support associates from the practitioners authorized to provide comprehensive community support services; adds intensive outpatient program as covered under this administrative regulation along with the associated requirements and provisions; adds therapeutic rehabilitation program as covered under this administrative regulation along with the associated requirements and provisions; adds therapeutic rehabilitation program; clarifies that individual outpatient therapy, group outpatient therapy, family outpatient therapy, and collateral outpatient therapy can be provided in excess of the three (3) hour per day limit if medically necessary; removes day treatment provisions that are not applicable; adds advanced practice registered nurses as practitioners authorize to provide medication assisted treatment for a substance use disorder; clarifies miscellaneous provisions; and corrects typographical or grammatical errors.

(b) The necessity of the amendment to this administrative regulation: The amendment after comments is necessary to clarify policies and to synchronize policies in the administrative regulation with what the federal government (Centers for Medicare and Medicaid Services or CMS) has approved.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment after comments will conform to the content of the authorizing statutes by synchronizing policies in the administrative regulation with what CMS has approved and by clarifying policies.

(d) How the amendment will assist in the effective administration of the statutes: The amendment after comments will assist in the effective administration of the authorizing statutes by synchronizing policies in the administrative regulation with what CMS has approved and by clarifying policies.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed

clinical social workers, licensed marriage and family therapists, and licensed psychological practitioners who wish to enroll in the Medicaid Program as independent providers will be affected by this administrative regulation. Licensed psychological associates, certified social workers (master's level), licensed professional counselor associates, and marriage and family therapy associates who wish to provide behavioral health services while working for one (1) of the aforementioned independent providers will also be affected by this administrative regulation. Medicaid recipients who qualify for behavioral health services will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Individuals listed in question (3) who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete and application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Individuals who wish to provide behavioral health services to Medicaid recipients per this administrative regulation could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). An individual who enrolls with the Medicaid Program to provide behavioral health services will benefit by being reimbursed for services provided to Medicaid recipients. Behavioral health service practitioners who can work for an independent behavioral health service provider will benefit from having an expanded pool of employers/employment settings in which to work. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate how many individual behavioral health professionals will enroll in the Medicaid Program, nor the utilization of substance use disorder services beyond the current utilization (pregnant women and children), nor the utilization of enhanced behavioral health services, nor the utilization of these services in the independent provider realm versus the realm of currently authorized providers (community mental health centers, federally-qualified health centers, rural health clinics, primary care centers, and physician offices.)

(b) On a continuing basis: The response to question (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implemen-

tation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization’s provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky’s Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the behavioral health provider base due to the variables involved as DMS cannot estimate how many individual behavioral health professionals will enroll in the Medicaid Program, nor the utilization of substance use disorder services beyond the current utilization (pregnant women and children), nor the utilization of enhanced behavioral health services, nor the utilization of these services in the independent provider realm versus the realm of currently authorized providers (community mental health centers, federally-qualified health centers, rural health clinics, primary care centers, and physician offices.)

(d) How much will it cost to administer this program for subsequent years? The response to question (a) also applies here.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: